IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6371 of 2007()

CRMP.2256/2007 of ADDL. DISTRICT COURT (SPL.COURT), KOTTAYAM
CRIME NO.161/2007 OF KADUTHURUTHI POLICE STATION, KOTTAYAM

.....

: PETITIONER/ACCUSED

RAJESH K.R., S/O. RAGHAVAN, AGED 23 YRS,
KOCHUPARAMBIL HOUSE, KALLARA SOUTH,
KALLARA VILLAGE, KOTTAYAM.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6371 of 2007

Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 5th accused. Altogether there are 5 accused persons. They face allegations for offences punishable, inter alia, under Section 326 r/w 149 I.P.C. In the F.I.R 3 accused persons are named. It is also stated that there are 2 identifiable persons who are cousins of accused 1 to 3. The petitioner is said to be one of those 3 persons referred to as identifiable cousins of the other accused. Investigation is in progress. The petitioner's name has been ascertained and report already given. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner first of all contends that there is no fracture suffered by the victim. Wound certificate dated 27.05.07 which is available in the case diary suggests that the X-ray clearly reveals the fracture. The counsel relies on the fact that the petitioner has not been named in the F.I.R. No crucial or sinister significance can be attached to the absence of the name of the petitioner as accused in the F.I.R as it is evident that sufficient details to identify the petitioner are given in the F.I statement itself and he is referred to as the cousin of the other accused.

3. The learned Public Prosecutor opposes the application and I reckon the stand to be justified. I am unable to find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-